IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 19.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.14944 of 2011

CMA CGM Agencies India Private Limited,
Having its Office at Transworld House,
No.118, Dr.R.K.Salai, Mylapore,
Chennai - 600004.
Rep. by its Branch Manager. ...Petitioner

Vs

1. Union of India,
   Ministry of Finance,
   New Delhi.

2. Indian Corporate Business Centre Limited,
   Container Freight Station,
   126/21, Vaikadu Village,
   Chennai - 600103.

3. Office of Commissioner of Customs (Import),
   Chennai Customs House,
   Rajaji Salai, Chennai - 600001. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondents to forthwith release and return to the petitioner the 75 empty containers (set out in Exhibit) along with such compensation towards the container idling charges as any deem appropriate to this Court, up to the date of release of the containers.

For Petitioner : Mr.S.Raghunathan

For Respondents: Mr.T.Pramod Kumar Chopda, SPC
for R1 & R3

Mr.S.Murugappan
for R2

O R D E R

Alleging certain discrepancies in the weighment of the containers by the 2nd respondent herein during their customary weighment of containers before admitting into the CFS, a total of 75 numbers x 20 feet containers came to be examined by the CFS PO on 05.02.2009 and 13.02.2009. These 75 containers were said to contain 'Heavy Melting Scrap' and the containers were supplied by the petitioner herein. In pursuant to the action taken on this, the 3rd respondent herein had passed a Order-in-Original No.56606/2017 dated 04.07.2017, whereby he had ordered for confiscation of the 75 x 20 feet containers under Section 118(a) of the Customs Act, 1962 and allowed the Steamer Agent to redeem these containers on payment of Redemption Fine. A penalty of Rs.85,00,000/- was also imposed on the petitioner under Section 116 of the Customs Act in the same order.

2. Aggrieved against the Order-in-Original, the petitioner had preferred an appeal in Sea. C.Cus II No.632 of 2017 before the Commissioner of Customs (Appeals-II) and by an order dated 25.09.2017, the appeal came to be partly allowed, in the following manner:-

> 5.1. On the first issue, it is seen that the LAA has relied upon the Hon'ble Madras High Court order dated 01.06.2016 in the case of M/s.Caravel Logistics Pvt. Ltd. The facts before the Hon'ble High Court were almost identical to the present case, as in that case also huge storage of MS Steal Scrap was noticed in the containers and the seals on the containers were found intact. The Division Bench of Hon'ble High Court of madras, after taking into consideration the Single Judge Order of Bombay High Court in the case of M/s.Shaw Wallace has upheld the penalty imposed on the steamer agent under Section 116 of the Customs Act. I have no reason not to follow the jurisdictional High Court order and apply the ratio in the facts of the present case. Accordingly, I do not find any infirmity in the impugned order as far as penalty imposed on the appellant under Section 116 of the Customs Act, 1962 is concerned. However, I find that the penalty imposed is twice the amount of duty involved on short landed goods which is the maximum penalty which can be imposed under the provisions of Section 116. In the facts and circumstances of the case the penalty imposed is excessive and requires reduction. Accordingly, the penalty is reduced to Rs.43,00,000/-.
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> 5.2. To appreciate the second issue. i.e. confiscation of the containers under Section 118(a) of the Customs

Act, I reproduce the Section as under:

> "118. Confiscation of packages and their contents-
>
> (a) Where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation.
>
> (b) Where any goods are brought in a package within the limits of a customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation."
>
> 5.3. As per the provisions of this Section, a package can be confiscated if the goods imported in the package are liable for confiscation. Without going into the question of whether a container can be considered as a package or not, I find that the LAA has not confiscated the goods i.e. HMS of 56.82 MTs contained in these containers and vacated the seizure. If the goods contained in the containers are not confiscated, then the question of confiscation of the containers would not arise at all. Accordingly, I set aside the confiscation of the containers.
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> The appeal is partially allowed.

3. Thus, the aforesaid observations made by the Appellate Authority are self explanatory to the effect that confiscation order was set aside and the penalty was reduced to Rs.43,00,000/-. The Appellate Authority has further held that without confiscating the goods in the container, the confiscation of the containers alone is not permissible. I am in agreement with such a finding. It is now brought to the notice of this Court that as against the order of the Appellate Authority, the Department has not filed any appeal or revision till date. The petitioner alone claims to have filed a revision as against the revised penalty imposed by the Appellate Authority.

4. The learned counsel for the 2^{nd} respondent would submit that they are neither parties in the Order-in-Appeal nor are they aware of such an order being passed and that, since these containers have been in their custody for all these years, they are entitled for storage charges.

5. The learned counsel for the petitioner would submit that all along the seizure of these 75 containers, without

confiscation of the goods inside the containers, itself is bad and they are entitled for the release of the containers, which aspect has also been ratified by the Appellate Authority in the order dated 25.09.2017. In view of this development, holding that the confiscation of the containers is bad by the Appellate Authority and also taking into account that the Department has not challenged the order of the Appellate Authority, this Court is of the view that the petitioner would be entitled for redeeming the 75 empty containers from the possession of the 2nd respondent herein. If the 2nd respondent is granted liberty to work out his remedies in accordance with law, for the purpose of claiming storage charges, the ends of justice would be secured. This Court is also conscious of the fact that the entitlement of the 2nd respondent to claim storage charges is a different cause of action, which requires to be dealt with by raising appropriate grounds.

6. In the light of the above observations, there shall be a direction to the respondents in general and the 2nd respondent in particular to forthwith release the 75 containers, which are morefully described in the annexure to this order, in any event, within a period of 30 days from the date of receipt of a copy of this order. The 2nd respondent is also at liberty to work out his remedies for claiming storage charges in accordance with law.

Annexure

SL. NO	CONTAINER NO	SIZE
1	TGHU3541691	20
2	ECMU1175320	20
3	ECMU2088390	20
4	GESU2112787	20
5	TPHU8091825	20
6	CLHU3160215	20
7	TRLU3457359	20
8	TRLU3764308	20
9	ECMU1907591	20
10	GSTU5284862	20
11	TOLU3331600	20
12	ECMU1048840	20
13	ECMU1094547	20
14	CNCU1519976	20
15	ECMU2072732	20
16	TRLU3768767	20
17	WFHU1086245	20
18	ECMU1428095	20
19	TRLU8820071	20

20	ECMU1417634	20
21	SCZU7528970	20
22	TRLU3179345	20
23	CLHU2454909	20
24	ECMU1435129	20
25	FSCU7688580	20
26	DVRU1305943	20
27	TRLU3398092	20
28	GATU1008730	20
29	CRXU1593418	20
30	ECMU1973934	20
31	SCZU7660250	20
32	ECMU1083590	20
33	JAYU1084376	20
34	DVRU1571938	20
35	ECMU1482943	20
36	MMCU2005619	20
37	FBLU3103324	20
38	ECMU2079681	20
39	WFHU1172831	20
40	IPXU3281750	20
41	INBU3811340	20
42	GVCU2072692	20
43	TTNU2694850	20
44	TRLU2576918	20
45	JAYU1036296	20
46	DVRU1604517	20
47	CAXU2338650	20
48	GATU1288436	20
49	ECMU2004764	20
50	ECMU1998009	20
51	ECMU1044989	20
52	ECMU1391484	20
53	GLDU3126729	20
54	EMCU1199300	20
55	SCZU7249403	20
56	ECMU1570068	20
57	CNCU1517989	20
58	TGHU3106349	20
59	CNAU2827356	20
60	GATU1316327	20
61	CMAU1047476	20
62	OTAU2638945	20

63	DVRU1306214	20
64	CRXU1182910	20
65	GVCU2051597	20
66	TGHU3257941	20
67	ECMU2025406	20
68	ECMU1714611	20
69	TGHU2728796	20
70	GESU2455678	20
71	TRLU9373614	20
72	GSTU4360211	20
73	IPXU3075560	20
74	DVRU1532947	20
75	GESU2446336	20

7. Accordingly, the Writ Petition stands allowed. No costs.

hvk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Union of India,
Ministry of Finance,
New Delhi.

2. Office of Commissioner of Customs (Import),
Chennai Customs House,
Rajaji Salai, Chennai - 600001.

+1cc to Mr.S.Murugappan, Advocate, SR.No.70445/19

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Kak(14/10/2019)